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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/914,861	09/04/2001	Richard Walker		4277

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EXAMINER

COLE, ELIZABETH M

ART UNIT

PAPER NUMBER

1771

DATE MAILED: 04/15/2003

6

Please find below and/or attached an Office communication concerning this application or proceeding.

AS-6

<b>Office Action Summary</b>	<b>Application No.</b> 09/914,861	<b>Applicant(s)</b> WALKER ET AL.	
	<b>Examiner</b> Elizabeth M Cole	<b>Art Unit</b> 1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 February 2003.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
       Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
       If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
- 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
     a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other:  |

Art Unit: 1771

1. Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims merely setting forth physical characteristics desired in an article, and not setting forth specific compositions which would meet such characteristics, are invalid as vague, indefinite, and functional since they cover any conceivable combination of ingredients either presently existing or which might be discovered in the future and which would impart the desired characteristics. Thus, the instant limitations are too broad and indefinite since it purports to cover everything which will perform the desired functions regardless of its composition, and, in effect, recites compounds by what it is desired that they do rather than what they are; the expressions also are too broad since it appears to read upon materials that could not possibly be used to accomplish purposes intended. *Ex parte Slob* (PO BdApp) 157 USPQ 172.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(c) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Art Unit: 1771

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-11 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Ouellette et al, U.S. Patent No. 6,025,049.

Ouellette et al discloses an absorbent article comprising a topsheet, an absorbent core, an acquisition layer between the topsheet and the absorbent core and an impermeable backsheet. The topsheet may comprise microapertures and macroapertures and may further comprise regions of differing surface energy. The topsheet may be a composite topsheet formed from a film/fabric laminate. See col 21, lines 24-42. The absorbent core may comprise any absorbent material including an airfelt of wood pulp, creped cellulose wadding, meltblown polymers including conform, chemically stiffened, modified or cross linked cellulosic fibers, synthetic fibers such as crimped polyester fibers, absorbent foam, absorbent sponges, superabsorbent polymers and any equivalents to these material, as well as mixtures and combinations of these materials. See col. 24, lines 36-54. With regard to the properties recited such as rewet, strikethrough, high internal surface area, high capillary pressure and compressibility of 488 g/cc, either the absorbent article of Ouellette et al would inherently possess the claimed properties or else it would have been obvious to one of ordinary skill in the art to have optimized the absorbency of the article by selecting the combination of materials which produced the desired absorbency.

Art Unit: 1771

5. Claims 12-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ouellette et al, U.S. Patent 6,025,049. Ouellette et al discloses an absorbent article as set forth above. Ouellette et al differs from the claimed invention because Ouellette does not disclose the particular types of wood employed, (claim 13), the particular bonding pattern by which the acquisition layer is bonded to the topsheet, (claim 15), or the particular combination of materials employed, (claims 12 and 15). However, since all of these are known materials for use in absorbent articles, it would have been obvious to have optimized the properties of the article through the selection of materials which were known to be suitable for this purpose.

6. Applicant's arguments filed 2/10/03 have been fully considered but they are not persuasive. Applicant argues that Ouellette et al is not prior art because both Ouellette and the instant application claim priority to a common parent application. However, the claimed properties are not disclosed in 08/832,715 which is a continuation of 08/442,935. This is clear since Ouellette '049 is also a continuation of 08/442,935. Therefore, the earliest priority date for the claims which recite the claimed properties would have to be that of 60/128,267, if the claims are recited in the provisional application, (this is not clear since the instant application is a CIP of the provisional application). In any event, the instant application is not entitled to the earlier priority dates since the claimed invention was not disclosed in the earlier parent applications. Therefore, since Ouellette qualifies as prior art under 102(e), (it is to another), the rejection has been maintained.

Art Unit: 1771

With regard to the ex parte Slob rejection, applicant argues that the office is attempting to say that any functional claim would be indefinite. However, the rejection is applied to the claims at hand. Applicant's citation of other patents is not relevant to the instant application. The instant claims recite properties of an absorbent article but do not recite any structure or material for any of the layers. The problem with the instant claims is not that they include functional limitations but that they do not define any structure or materials for the various layers.

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth M. Cole whose telephone number is (703) 308-0037. The examiner may be reached between 6:30 AM and 5:00 PM Monday through Thursday.

Mr. Terrel Morris, the examiner's supervisor, may be reached at (703) 308-2414.

Art Unit: 1771

Inquiries of a general nature may be directed to the Group Receptionist whose telephone number is (703) 308-0661.

The fax number for official faxes is (703) 872-9310. The fax number for official after final faxes is (703) 872-9311. The fax number for unofficial faxes is (703) 305-5436.

  
Elizabeth M. Cole  
Primary Examiner  
Art Unit 1771

e.m.c  
April 14, 2003